83-5494

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1983

IN THE INTEREST OF

EDWARD STEPHENS,

a minor

EDWARD STEPHENS, APPELLANT

ON APPEAL FROM THE SUPREME

COURT OF PENNSYLVANIA

JURISDICTIONAL STATEMENT

RAYMOND R. WILLIAMS
Assistant Public Defender
Attorney for Appellant

Public Defender's Office
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(215) 891-4099

September 23, 1983

QUESTION PRESENTED

Whether the Double Jeopardy Clause prohibits the Commonwealth of Pennsylvania[1], acting pursuant to 42 Pa. C.S. Sec. 6305, from obtaining a rehearing de novo before a judge on a petition charging Appellant with delinquency, after there had been a master's hearing and recommendation that the petition be dismissed.

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[1]Parties to the proceeding:

The Commonwealth of Pennsylvania, as Appellee in the Supreme Court of Pennsylvania, was represented by the Office of the District Attorney of Delaware County, Courthouse, Media, Pennsylvania 19063.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Constitution and statute:

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OPINIONS BELOW

The opinion of the Supreme Court of Pennsylvania (App. A, infra, 1a-8a) is reported at 461 A.2d 1223 (Pa., 1983). The opinion of the Superior Court of Pennsylvania (App. B, infra 9a-23a) is reported at 277 Pa. Super. 470, 419 A.2d 1244 (1980).

JURISDICTION

This is an appeal from the final judgment of the Supreme Court of Pennsylvania entered July 1, 1983, affirming the order of the Superior Court of Pennsylvania which affirmed appellant's adjudication of delinquency in the Court of Common Pleas of Delaware County, Pennsylvania. Appellant has contended throughout the proceedings that a rehearing before a judge, after a master recommended dismissing the delinquency petition, placed Appellant in jeopardy twice. The Opinion of the Supreme Court of Pennsylvania declared that 42 Pa.C.S. Sec. 6305 was constitutional, and did not violate the Double Jeopardy Clause of the Fifth Amendment as applied to the States through the Fourteenth Amendment. A Notice of Appeal to this Court (App.F, infra 34a) was filed with the Supreme Court of Pennsylvania and docketed on August 22, 1983. This Court has jurisdiction of this appeal by virtue of 28 U.S.C. Sec. 1257(2).

CONSTITUTIONAL AND STATUTORY

PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in pertinent part:

> ...nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb...

The Fourteenth Amendment to the United States Constitution in pertinent part provides:

> ...No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

The challenged state statute, 42 Pa.C.S. Sec. 6305, provides:

> ...(b) Hearings before masters. - The court of common pleas may direct that hearings in any case or class of cases be conducted in the first instance by the master in the manner provided in this chapter. Before commencing the hearing the master shall inform the parties who have appeared that they are entitled to have the matter heard by a judge. If a party objects, the hearing shall be conducted by a judge.

(c) Recommendation of masters. - Upon the conclusion of a hearing before a master, he shall transmit written findings and recommendations for disposition to the judge. Prompt written notice and copies of the findings and recommendations shall be given to the parties to the proceeding.

(d) Rehearing before judge. - A rehearing before the judge may be ordered by the judge at any time upon cause shown. Unless a rehearing is ordered, the findings and recommendation become the findings and order of the court when confirmed in writing by the judge.

STATEMENT OF THE CASE

A petition alleging that Appellant was delinquent was filed February 10, 1978, in the Court of Common Pleas of Delaware County. Appellant was charged with having engaged in acts which constitute aggravated assault and simple assault.

The petition was assigned for an adjudicatory hearing to a master in juvenile court. The hearing was held on June 21, 1978, at which time the Commonwealth presented its evidence against the Appellant. The Appellant and a defense witness also testified about the circumstances of the altercation underlying the charges.

At the conclusion of the hearing the master made written findings of fact and recommended that the petition be dismissed. Thereafter the Commonwealth filed an Exception to the Master's Recommendation and petitioned for a rehearing before a judge. On July 3, 1978, the Juvenile Court Judge granted the Commonwealth a rehearing.

Before the rehearing was held, the Appellant filed a Motion to Dismiss the Commonwealth's peti-

tion on the ground that a rehearing de novo would violate Appellant's right not to be twice put in jeopardy under the United States Constitution. The motion was taken under advisement and on November 9, 1978, denied. The Juvenile Court Judge held that the rehearing procedure of 42 Pa.C.S. Sec. 6305 did not place Appellant twice in jeopardy. (App.C, infra 24a-29a).

A rehearing was held on January 23, 1979, at which time the same witnesses who had testified before the master repeated their testimony. The Attorney for the Commonwealth vigorously attempted to impeach the Appellant by pointing out that some details of his testimony had not been mentioned at the hearing before the master. The judge found Appellant delinquent.

An appeal was taken to the Superior Court of Pennsylvania on the issue of double jeopardy. The majority of the three judge panel of the Superior Court did not decide the issue, holding that Appellant had waived his double jeopardy rights when he agreed to have his hearing before a master. The Supreme Court of Pennsylvania granted allowance of

appeal from the Superior Court judgment on December 2, 1980. On July 1, 1983, the Supreme Court affirmed the Superior Court's order upholding Appellant's adjudication of delinquency, concluding that Appellant was not placed in jeopardy at the master's hearing. (App.E, infra 33a).

THE QUESTION PRESENTED IS SUBSTANTIAL

Appellant submits he suffered an adjudication of delinquency in violation of his constitutional right not to be twice placed in jeopardy. The Supreme Court of Pennsylvania held that this federal constitutional right does not apply to juvenile court master's hearings. If this decision is permitted to stand, juveniles in Pennsylvania who agree to submit their case to a master will be thereby exposing themselves to two successive adjudicatory hearings. Knowledge of this possibility is likely to discourage participation in the master system, preventing the conservation of judicial resources the system was designed to achieve.

Appellant was forced to undergo a second hearing on the delinquency allegation. The prosecution was afforded two opportunities to present its

case; it was permitted to attempt to persuade two different factfinders. This Court identified these second chances as being among those proscribed by the Double Jeopardy Clause in Swisher v. Brady, 438 U.S. 204, 98 S.Ct. 2699 (1978).

The Supreme Court of Pennsylvania held that the Double Jeopardy Clause does not forbid a rehearing on a delinquency petition by a juvenile court judge following a hearing on that petition by a master because "clearly jeopardy does not attach at a master's hearing" (App.A, infra 6a). That conclusion conflicts with the reasoning expressed by this Court in Swisher v. Brady:

> The State contends that jeopardy does not attach at the hearing before the master. Our decision in Breed v. Jones, 421 U.S. 519 (1975), however, suggests the contrary conclusion. "We believe it is simply too late in the day to conclude...that a juvenile is not put in jeopardy at a proceeding whose object is to determine whether he has committed acts that violate a criminal law and whose potential consequence include both the stigma inherent in such a determination and the deprivation of liberty for many years." Id., at 529. The California juvenile proceeding reviewed in Breed involved the use of a referee, or master, and was not materially different -- for purposes of analysis of attachment of jeopardy -- from a Rule 911 proceeding. See generally In re Edgar M., 14 Cal. 3d 727, 537 P.2d 400 (1975);

cf. Jesse W. v. Superior Court, 20 Cal. 3d 893, 576 P.2d 963 (1978).

> It is not essential to decision in this case, however, to fix the precise time when jeopardy attaches. Swisher v. Brady, 438 U.S. 204, 215 fn. 12, 98 S.Ct. 2699, 2706 (1978).

While this conclusion was not necessary to a decision in Swisher, the dissenting opinion indicated that the conclusion was shared:

> ...the first inquiry in any double jeopardy case must be whether jeopardy has attached (citations omitted)....I agree with the Court that jeopardy does attach at the master's hearing. Id., at 220.

This issue was not necessary to the decision in Swisher because the Maryland legislature and the Maryland Court of Appeals recognized the double jeopardy problem and altered their master system by the time the controversy reached this Court. The Maryland master system created by statute, which closely resembled the Pennsylvania system challenged in the present case, was found to violate the Double Jeopardy Clause. Aldridge v. Dean, 395 F.Supp. 1161 (Md. 1975). Subsequently the Maryland Court of Appeals promulgated a new rule to govern the use of masters in juvenile proceedings: Rule 911, Maryland Rules of Procedure. Among the significant changes was that the

State no longer had the power to secure a de novo hearing before the Juvenile Court judge after unfavorable proposals by the master. In addition, the nonfinal nature of a master's conclusions was stressed by emphasizing that the master's findings and recommendations are only proposed. This altered system was examined by this Court in Swisher, and was held not to violate the constraints of the double jeopardy clause.

The master system in Pennsylvania is more typical in that the master is empowered to make findings of fact and submit written recommendations for disposition. 42 Pa.C.S. sec. 6305(c). The work of the master carries greater weight than it does under the altered Maryland scheme. In Pennsylvania, "Unless a rehearing is ordered, the findings and recommendations become the findings and order of the court when confirmed in writing by the judge." 42 Pa.C.S. sec. 6305(d). It has been held in Pennsylvania that where no rehearing was held, a court's order which failed to follow the recommendation of the master was void as a matter of law. In the Interest of

Dreslinski, 254 Pa.Super. 539, 386 A.2d 81, 1978. In Pennsylvania, the master's conclusions have an impact they do not have in Maryland.

The fallacy of the Supreme Court of Pennsylvania's holding that Appellant was not placed in jeopardy at the master's hearing is easily seen by considering what happens when a master recommends an adjudication of delinquency. All that remains is for the judge to affix his signature to the Order. See App. D, infra 30a. This is an event at which the juvenile is not present and of which he is likely unaware. It offends a most basic sense of justice to hold that a juvenile is not in jeopardy at the court hearing where he confronts the witnesses against him and presents his defense, but is only in jeopardy when a judge performs the ministerial function of signing an order in the privacy of chambers.

It should also be noted that a juvenile in Pennsylvania does not have an absolute right to a rehearing de novo if he wishes to attack adverse findings and recommendations by the master. A judge has discretion to order a rehearing "upon

cause shown." 42 Pa.C.S. sec. 6305(d). Thus a juvenile can be adjudicated delinquent without, according to the Supreme Court of Pennsylvania, ever having been in court in jeopardy.

The failure of the Supreme Court of Pennsylvania to follow the guidance of this Court in Swisher has resulted in a deprivation of constitutional rights and a dilemma for participants in the juvenile justice process. The desire to cooperate in an efficient master system is dampened by the threat of having to undergo two adjudicatory hearings.

CONCLUSION

Probable jurisdiction should be noted.

Respectfully submitted,

Raymond R. Williams

RAYMOND R. WILLIAMS
Assistant Public Defender
Attorney for Appellant

IN THE SUPREME COURT OF PENNSYLVANIA
Eastern District

IN THE INTEREST OF	:	No. 80-3-819.
	:	
EDWARD STEPHENS, a minor	:	
	:	Appeal from the Order of the
	:	Superior Court at No. 257 October
	:	Term, 1979, dated April 25, 1980,
	:	affirming the Adjudication of the
	:	Court of Common Pleas of Delaware
Appeal of: EDWARD STEPHENS	:	County at J.V. No. 18499, dated
	:	January 23, 1979.
	:	
	:	277 Pa.Super. 470,
	:	419 A.2d 1244.
	:	
	:	ARGUED: April 21, 1983.

OPINION OF THE COURT

ROBERTS, C.J. Filed: July 1, 1983

This is an appeal, by allowance, from an order of the Superior Court affirming an order of the Court of Common Pleas of Delaware County in which appellant Edward Stephens, a juvenile, was adjudged delinquent. Appellant challenges the constitutionality of section 6305 of the Judicial Code, 42 Pa. C.S. § 6305 (formerly § 5 of the Juvenile Act, Act of December 6, 1972, P.L. 1464, 11 P.S. § 50-301), which authorized the court of common pleas to hold a "rehearing" on the petition charging appellant with delinquency following a master's recommendation that the petition be dismissed. Because we conclude that section 6305 is constitutional, we reject appellant's challenge and affirm.

The delinquency petition, filed in February of 1978, alleged that appellant, then fifteen years old, had been involved in an

altercation with Santiago Garcia, then twelve, which caused Garcia to sustain injuries to the mouth, teeth, and cheekbone. Appellant was charged with delinquency for having engaged in acts which constitute aggravated assault and simple assault.

Delaware County employs members of the Bar as masters as a means of facilitating the prompt and effective disposition of juvenile cases. See 42 Pa. C.S. §§ 6305(a) and 6305(b).[1] Thus the delinquency petition was assigned to a master, who, on June 21, 1978, held a hearing on the petition. At the commencement of the hearing, pursuant to 42 Pa. C.S. § 6305(b),[2] the master told the parties of their right to have the matter heard in the first instance by a judge, and further told the parties, "Unless there is an objection to this matter being heard before the Master, we are ready to proceed." Neither appellant nor his counsel objected, and the parties proceeded to present evidence on the petition.

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1. Section 6305(a) authorizes this Court to "promulgate rules for the selection and appointment of masters on a full-time or part-time basis," and provides that masters are to be "member[s] of the bar of this Commonwealth." Subsection (b) of section 6305 provides that "[t]he court of common pleas may direct that hearings in any case or class of cases be conducted in the first instance by the master in the manner provided in this chapter [(Chapter 63 -- 'Juvenile Matters')]."

2. Section 6305(b) provides in relevant part:

> "Before commencing the hearing the master shall inform the parties who have appeared that they are entitled to have the matter heard by a judge. If a party objects, the hearing shall be conducted by a judge."

The master heard sworn testimony from Garcia and appellant. Garcia maintained that the altercation had been initiated by appellant and that appellant had kicked him in the face. Appellant acknowledged that he had punched Garcia, but claimed that Garcia had initiated the use of force by swinging at him with a stick, pushing him against a wall, and punching him. On cross-examination, appellant stated that he had considered the fight to be "mutual combat." Marvin Mobley, a cousin of appellant and an alleged eye-witness of a portion of the fight, was also sworn as a witness. He testified that Garcia had sustained his injuries only after falling from a stairway near the point at which the fight had begun.

At the conclusion of the hearing, the master stated:

> "I am certain that the parties, all of them, regret the incident occurred, but at this point in time the Master is not convinced beyond a reasonable doubt that the juvenile defendant should be adjudicated delinquent on the charges of simple assault and aggravated assault and is going to dismiss the Petition."

On a printed form which the Master submitted to the Juvenile Court pursuant to section 6305(c) of the Judicial Code, which requires a master to transmit "written findings and recommendations for disposition to the judge," the master entered the notation "Insufficient evidence beyond a reasonable doubt," and circled, as his recommendation, "Petition dismissed."[3]

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3. Section 6305(c) provides:

> "Recommendations of masters. -- Upon the conclusion of a hearing before a master, he shall transmit written findings and recommendations for disposition to the judge. Prompt written notice and copies of the findings and recommendations shall be given to the parties to the proceeding."

[cont'd on next page]

The Commonwealth filed a written "Exception to Master's Recommendations and Petition for a Rehearing," which alleged that the master's determination was "arbitrary and capricious," particularly because appellant had "admitted that he considered the fight mutual combat," a misdemeanor of the third degree. See 18 Pa. C.S. § 2701(b). On July 3, 1978, after consideration of the Commonwealth's petition and an answer filed by appellant, the court of common pleas granted a rehearing and scheduled the matter for a hearing "before the regular Hearing Judge at the earliest practicable date."[4]

On July 25, the date on which the matter was to be heard by a juvenile court judge, appellant filed a motion to dismiss the Commonwealth's petition on the ground that a rehearing before a juvenile court judge would violate appellant's right not to be placed twice in jeopardy. See U.S. Const. Amends. V & XIV; Pa. Const. art. I,

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3. [cont'd from previous page]

The fact that the master stated, at the close of the hearing on the delinquency petition, that he was "going to dismiss the Petition," is of no consequence for purposes of determining whether appellant was placed in jeopardy at the master's hearing. As the master's recommendation demonstrates, the master properly perceived that he was acting pursuant to his statutorily defined role as an advisor, and not as a "judge."

4. Rehearings are authorized by subsection (d) of section 6305, which provides:

> "Rehearing before judge. -- A rehearing before the judge may be ordered by the judge at any time upon cause shown. Unless a rehearing is ordered, the findings and recommendations [of the master] become the findings and order of the court when confirmed in writing by the judge."

§ 10. The motion was taken under advisement and, after the submission of briefs, denied.

At the rehearing, held on January 23, 1979, the same persons who had testified at the hearing before the master testified before the juvenile court judge and presented substantially the same versions of the incident as had been presented at the master's hearing. At the close of testimony, but before the entry of an adjudication, the court explored whether appellant's parents would be willing to sign a consent decree discharging appellant on the condition that his parents make restitution of $300 to the parents of Garcia within six months. See 42 Pa. C.S. § 6340 (consent decrees). Appellant's father stated that he would sign such a decree, but after an in-chambers conference the court announced:

> "Counsel [for the juvenile] feels that [appellant] would be waiving certain rights if they settled this matter with a Consent Decree. Therefore, the Court finds the defendant delinquent and directs that the parents [of appellant] pay within six months a sum of $300.00 on account of restitution to the parents of the Garcia boy."

In affirming the order of the court of common pleas, a majority of a panel of the Superior Court held that appellant had "waived his constitutional right not to be placed in double jeopardy" by not objecting to the submission of the matter to the master at the commencement of the master's hearing. 277 Pa.Super. 470, 473, 419 A.2d 1244, 1245 (1980). Appellant contends that his silence at the commencement of the master's hearing may not properly be construed as a knowing and intelligent waiver of his right not to be placed twice in jeopardy, as he was not advised of the possibility that the

matter could be heard by a judge after having been heard by the master.

Appellant's contention is based on the erroneous premise that the double jeopardy clause of the Constitution of the United States and the double jeopardy clause of the Pennsylvania Constitution forbid a rehearing on a delinquency petition before a juvenile court judge following a hearing on that petition before a master. The master's function is, by the express terms of the Judicial Code, confined to the transmittal of "written findings and recommendations for disposition to the judge." 42 Pa. C.S. § 6305(c). The master's findings and recommendations may become the "findings and order of the court" only when "confirmed in writing by the judge," 42 Pa. C.S. § 6305(d), the only official under the legislatively designed system entrusted to enter a binding judgment. Whereas jeopardy attaches at proceedings before a juvenile court judge, "whose object is to determine whether [the juvenile] has committed acts that violate a criminal law and whose potential consequences include both the stigma inherent in such a determination and the deprivation of liberty for many years," Breed v. Jones, 421 U.S. 519, 529, 95 S.Ct. 1779, 1785 (1975), clearly jeopardy does not attach at a master's hearing, whose purpose is to facilitate the final disposition of delinquency petitions by a juvenile court judge.

Our conclusion that appellant was not placed in jeopardy at the master's hearing is supported by Swisher v. Brady, 438 U.S. 204, 98 S.Ct. 2699 (1978), in which the Supreme Court of the United States upheld the constitutionality of Maryland's master system. Like the master system employed in Pennsylvania, the master system at issue

in Swisher utilized masters only to make proposed dispositions to a juvenile court judge. In rejecting the contention that Maryland's master system violated the prohibition against double jeopardy, the Court stated:

> "[I]t is for the State . . . to designate and empower the factfinder and adjudicator. And here Maryland has conferred those roles only on the Juvenile Court judge. Thus, regardless of which party is initially favored by the master's proposals, and regardless of the presence or absence of exceptions, the judge is empowered to accept, modify, or reject those proposals."

438 U.S. at 216, 98 S.Ct. at 2707.

Appellant contends that, by allowing a juvenile court judge to hear testimony on a delinquency petition afresh, section 6305 impermissibly affords the Commonwealth "another opportunity to supply evidence which it failed to muster at the first proceeding," Burks v. United States, 437 U.S. 1, 11, 98 S.Ct. 2141, 2147 (1978). In support of this contention, appellant relies upon a portion of Swisher in which the Supreme Court rejected a similar challenge to Maryland's master system, observing that the Maryland system permitted a juvenile court judge to receive additional evidence "only with the consent of the minor." 438 U.S. at 216, 98 S.Ct. at 2706. On this record, however, it is clear that the Commonwealth did not present evidence before the juvenile court judge that it had previously failed to "muster": Garcia, the victim of the alleged assault, was the sole Commonwealth witness at both hearings, and presented substantially the same testimony. More important, the Supreme Court in Swisher did not rely upon Maryland's consent requirement as a condition of that system's constitutionality, but

rather recognized that Maryland had conferred the role of factfinder and adjudicator only on the juvenile court judge.

"Properly operated, the juvenile system is capable of giving understanding and sympathetic treatment for each juvenile by providing the correctional, rehabilitative and instructional attention appropriate to each case." Terry Appeal, 438 Pa. 339, 349, 265 A.2d 350, 355 (1970), aff'd sub. nom. Terry v. Pennsylvania, 403 U.S. 528, 91 S.Ct. 1976 (1971). Because the master system established by section 6305 of the Judicial Code is an appropriate, constitutional means of effectively allocating professional and judicial resources within our system of juvenile justice, the order of the Superior Court must be affirmed.

Order affirmed.

J. 1289/1979

IN THE INTEREST OF EDWARD STEPHENS, a Minor : IN THE SUPERIOR COURT OF

: PENNSYLVANIA

APPEAL OF: EDWARD STEPHENS : PHILADELPHIA DISTRICT

: NO. 257 OCTOBER TERM,

: 1979

Appeal from the Order of the Court of Common Pleas of Delaware County, Juvenile Division, at NO. J.V. #18499.

BEFORE: PRICE, WIEAND* AND VAN DER VOORT, JJ.

OPINION BY VAN DER VOORT, J. FILED APR 2 [illegible]

This case involves an appeal from an adjudication of delinquency.

On February 10, 1978, a petition alleging delinquency was filed against appellant, then 15 years old, stemming from an incident in which a 12 year old boy was severely beaten.

A hearing was conducted on June 21, 1978 before Howard Farber, Esquire, Master in Juvenile Court, and resulted in the Master issuing a recommendation that the petition be dismissed for insufficient evidence.

The Commonwealth then filed an Exception to Master's Recommendations and Petition for a Rehearing, to which appellant

*Judge Donald E. Wieand is sitting by special designation.

filed an Answer.

On July 3, 1978, the Honorable Howard F. Reed, Jr. granted the Commonwealth a rehearing before the Juvenile Hearing Judge. Prior to the July 25, 1978 date set for this rehearing appellant filed a motion to dismiss the Commonwealth's petition for a rehearing, raising the issue of double jeopardy. The Honorable Robert A. Wright agreed to hear the merits of the double jeopardy issue, and after oral arguments and submission of briefs entered an Order dated November 9, 1978, refusing appellant's motion.

A full rehearing was held before the Honorable John V. Diggins on January 23, 1979, at which time appellant again raised the issue of double jeopardy. After hearing testimony from the same three witnesses who testified before the Master, the court below entered an Adjudication and Order for Further Study in which appellant was found delinquent.

Appellant now appeals from this Order.

The sole issue presented on appeal is that of double jeopardy. Appellant argues that the procedure followed in Pennsylvania in juvenile delinquency proceedings of allowing the Commonwealth to have a de novo hearing before a judge following a recommendation of dismissal of the petition by a

Master, (Juvenile Act, Act of December 6, 1972, P.L. 1464, No. 333 §5, 11 P.S. §50-301) violates the ban against double jeopardy of the Pennsylvania and United States Constitutions.

Appellant cites the case of Swisher v. Brady, 438 U. S. 204 (1978) for support. In Swisher, the Supreme Court upheld a recently enacted Maryland procedure for juvenile delinquency hearings against a double jeopardy attack. A single-judge federal district court had held that the prior Maryland procedure of allowing the state to re-try its case de novo in front of a judge was in violation of the ban against double jeopardy, Aldridge v. Dean, 395 F. Supp. 1161 (Md. 1975). In response to this the Maryland Court of Appeals, pursuant to its rulemaking powers, promulgated a new rule, providing in pertinent part that the record is closed after the Master's findings except where both parties consent to have it opened.

The Court found that under the new Maryland procedure the prosecution is prevented from getting the forbidden "second crack" at the defendant (438 U. S. at 216).

Appellant argues that the Pennsylvania procedure does not fall under this exception as it permits the Commonwealth to present evidence for its case twice before the

trier of fact.

We find, however, that appellant waived his constitutional right not to be placed in double jeopardy at the time of the master's hearing. The Pennsylvania law provides that:

> "Before commencing the hearing the master shall inform the parties who have appeared that they are entitled to have the matter heard by the judge. If a party objects, the hearing shall be conducted by the judge." [11 Pa. C.S.§50-301(b)]

In the notes of testimony for June 21, 1978 on page two Master Farber gave the required instruction and as no objection was made the hearing was then begun. This Pennsylvania procedure is entirely different from the Maryland rule, disapproved of in Aldridge (supra), where the juvenile had no choice as to whether to be heard by a magistrate or a judge. Instantly the juvenile had a choice whether he should be heard by a master, after which hearing he might have to be heard again by a judge, or be heard by a judge initially.

The Supreme Court defined "waiver" as the knowing and voluntary relinquishment of a right in Johnson v. Zerbst, 304 U. S. 458 (1938). Thus when the juvenile, with his attorney, chooses voluntarily to be heard by a master, he waives his

right to complain of double jeopardy should the Commonwealth request rehearing before a judge.

Order affirmed.

Wieand, J. files a Dissenting Opinion.

J. 1289/79

IN THE INTEREST OF EDWARD STEPHENS, a minor	) :)	IN THE SUPERIOR COURT OF PENNSYLVANIA
APPEAL OF: EDWARD STEPHENS	) :)	Philadelphia District No. 257 October Term, 1979

Appeal from the Order of the Court of Common Pleas of Delaware County, Juvenile Division, at No. J.V. #18499.

BEFORE: PRICE, VAN DER VOORT and WIEAND, JJ*

DISSENTING OPINION BY WIEAND, J.:

A petition alleging that Edward Stephens, a juvenile, had committed an act of delinquency, i.e., an aggravated assault, was heard by a master pursuant to authority contained in the Juvenile Act, Act of December 6, 1972, P.L. 1464, No. 333, § 5, 11 P.S. § 50-301.[1] At the conclusion of the hearing, the master found that the Commonwealth had failed to sustain the averments of the petition and recommended that the petition be dismissed. The Commonwealth thereafter requested and obtained a rehearing before a juvenile court judge. After the request for a rehearing had been granted, the juvenile demurred on grounds that a second hearing would violate concepts of double jeopardy. His application to dismiss was

[1] This section was repealed by the Act of April 28, 1978, P.L. 202, No. 53, § 2(a)[1460], effective June 27, 1978. It was re-enacted in substantially the same form in 42 Pa.C.S. § 6305.

*Judge Donald E. Wieand is sitting by special designation.

denied, and a hearing de novo was held. After this hearing, appellant was adjudicated a delinquent.

On appeal, appellant concedes that there is statutory authority for the procedure followed but argues that such procedure is violative of the double jeopardy clause contained in the Fifth Amendment of the Constitution, as made applicable to the states by the Fourteenth Amendment.[2] See: Benton v. Maryland, 395 U.S. 784, 89 S.Ct. 2056, 23 L.Ed.2d 707 (1969). The majority concludes that appellant waived the benefits of the constitutional prohibition against double jeopardy by agreeing to have a master hear the petition. This agreement followed instructions by the master that appellant could elect to have a hearing before a judge.

A waiver of a constitutional right must be an intentional relinquishment or abandonment of a known right or privilege. Commonwealth v. Norman, 447 Pa. 217, 221, 285 A.2d 523, 526 (1971). It must be made knowingly and intelligently; one must be aware of both the right and the risks of forfeiting the same. Commonwealth v. Barnette, 445 Pa. 288, 290-91, 285 A.2d 141, 142 (1971). Waiver of

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[2] A double jeopardy clause is also contained in Article 1, § 10 of the Pennsylvania Constitution.

constitutional rights by a juvenile, moreover, can be effected only when it is shown that the juvenile comprehended the full significance of the rights intended to protect him or her. Commonwealth v. Smith, 472 Pa. 492, 496, 372 A.2d 797, 799 (1977). The presumption must always be against the waiver of a constitutional right. Commonwealth v. Norman, supra. Therefore, the burden of proving a knowing and intelligent waiver is on the Commonwealth. Commonwealth v. Smith, supra; Commonwealth v. Flowers, 245 Pa. Superior Ct. 198, 212, 369 A.2d 362, 369 (1976). High standards of proof are always required where a waiver of constitutional rights is involved. Commonwealth v. Collins, 436 Pa. 114, 121, 259 A.2d 160, 163 (1969).

Instantly, appellant was told, as the statute required, that he had a right to have the petition heard by a judge rather than by a master. He was not told, however, that if he proceeded to have the matter heard by a master and the master recommended dismissal, the Commonwealth could nevertheless require him to go through a second full hearing before a juvenile judge. Moreover, he was not told of his right not to be put twice in jeopardy for the same offense. Therefore, I find no support in this record for the majority's conclusion that appellant knowingly and intelligently waived

his constitutional right not to be placed twice in jeopardy for the same offense.

The substantive issue, involving as it does the validity of statutorily prescribed proceedings involving juveniles, is not only significant but also difficult. It is certainly worthy of consideration by the entire Superior Court sitting en banc. Because the substantive issue is before this panel and, in my judgment, must be decided, I venture the following thoughts.

The merits of appellant's double jeopardy argument must depend in large measure upon principles enunciated by the Supreme Court in the leading case of Swisher v. Brady, 438 U.S. 204, 98 S.Ct. 2699, 57 L.Ed.2d 705 (1978). In that case, the Court considered whether a Maryland procedure, similar to but not precisely the same as that adopted by the Pennsylvania statute, was violative of the double jeopardy clause of the Fifth Amendment. Specifically, the Maryland procedure provided in pertinent part:

> "Upon the filing of exceptions [to the master's report], a prompt hearing shall be scheduled on the exceptions. *An excepting party other than the State may elect a hearing de novo or a hearing on the record. If the State is the excepting party, the hearing shall be on the record, supplemented by such additional evidence as the judge*

> *considers relevant and to which the parties raise no objection.* In either case the hearing shall be limited to those matters to which exceptions have been taken."
> (Emphasis added.)

Maryland Rules of Procedure, 911(c); Swisher v. Brady, supra at 211, n.9, 98 S.Ct. at ___, n.9, 57 L.Ed.2d at 712, n.9.

A majority of the Supreme Court concluded: "To the extent the Juvenile Court judge makes supplemental findings in a matter permitted by Rule 911 - either sua sponte, in response to the State's exceptions, or in response to the juvenile's exceptions, and either on the record *or on a record supplemented by evidence to which the parties raise no objection* - he does so without violating the constraints of the Double Jeopardy Clause." (Emphasis added.) Id. at 219, 98 S.Ct. at ___, 57 L.Ed.2d at 717.

By way of comparison, the Pennsylvania Statute provides:

> "Section 5. Masters.—(a) The Supreme Court may promulgate rules for the selection and appointment of masters on a full-time or part-time basis. A master shall be a member of the bar of the Supreme Court. The number and compensation of masters shall be fixed by the Supreme Court, and their compensation shall be paid by the county.
> (b) The court of common pleas may direct that hearings in any case or

> class of cases be conducted in the first instance by the master in the manner provided by this act. Before commencing the hearing the master shall inform the parties who have appeared that they are entitled to have the matter heard by the judge. If a party objects, the hearing shall be conducted by the judge.
>
> (c) *Upon the conclusion of a hearing before a master, he shall transmit written findings and recommendations for disposition to the judge.* Prompt written notice and copies of the findings and recommendations shall be given to the parties to the proceeding.
>
> (d) *A rehearing before the judge may be ordered by the judge at any time upon cause shown.* Unless a rehearing is ordered, the findings and recommendations become the findings and order of the court when confirmed in writing by the judge." (Emphasis added.)

The procedure adopted by the Pennsylvania statute varies significantly from the Maryland procedure. It permits a "rehearing" before the judge in his discretion "at any time upon cause shown." This "rehearing" clearly is intended to be a hearing de novo. It may be held with or without the consent of the juvenile.

The Supreme Court of Pennsylvania has emphasized that the purpose of the double jeopardy clause is to prevent successive trials, not merely multiple convictions and

punishments. In Commonwealth v. Bolden, 472 Pa. 602, 619, 373 A.2d 90, 98 (1977), quoting from Green v. United States, 355 U.S. 184, 187-88, 78 S.Ct. 221, 223, 2 L.Ed.2d 199, 204 (1957), the Court said: "The underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty."

The Pennsylvania statute provides for successive trials. It allows the Commonwealth to have the forbidden "second crack," that is, the opportunity to "supply evidence which it failed to muster in the first proceeding." See: Swisher v. Brady, supra at 215-16, 98 S.Ct. at ___, 57 L.Ed.2d at 715; Burks v. United States, 437 U.S. 1, 11, 98 S.Ct. 2141, ___, 57 L.Ed.2d 1, 9 (1978). It may pursue this "second crack" whenever it believes its evidence has failed to persuade the master. The rehearing is discretionary with the court, Meanwhile, the proceedings are kept alive. If

a rehearing is granted, the juvenile is subjected to the embarrassment, expense and ordeal of a second trial. He is tried a second time despite the fact that he has once been found innocent. Such a procedure impinges on the purposes of the double jeopardy clause and is violative thereof. Compare: Aldridge v. Dean, 395 F.Supp. 1161 (D. Md. 1975); In the Matter of Raymond P., 86 Cal.App.3d 797, 150 Cal.Rptr. 537 (1978).

The court below concluded that there was no violation of double jeopardy because the master could only recommend findings to the court and could not render a final decision. The proceedings before the court, it reasoned further, were merely a continuation of the proceedings before the master, so that jeopardy had attached only once and then was continuing. This will not satisfy double jeopardy concepts.

The statute contemplates a factfinding function for the master, for it directs, "he shall transmit written findings and recommendations for disposition to the judge." If this procedure were to be adopted for use in adult criminal proceedings, it would mean that a finding of guilt or innocence was for the master, who would submit the same to the court, together with a recommended sentence. The juvenile judge,

under the statute, is not required to accept the master's recommended disposition of a juvenile offender. He cannot alter the master's findings, however, without granting a rehearing. This procedure has established at least two layers of adjudication. If the first layer results in an acquittal, the Commonwealth has a right to seek another hearing on the next level. The proliferation of levels at which the juvenile must defend himself is the very type of practice which the double jeopardy clause was intended to prevent. See: Swisher v. Brady, supra at 227, 98 S.Ct. at ___, 57 L.Ed.2d at 722 (Justice Marshall, dissenting). See also: United States v. Martin, 430 U.S. 564, 97 S.Ct. 1349, 51 L.Ed.2d 642 (1977); Breed v. Jones, 421 U.S. 519, 95 S.Ct. 1779, 44 L.Ed.2d 346 (1975).

Double jeopardy protects an individual's right to proceed to final decision before a particular tribunal once jeopardy has attached, unless manifest necessity requires termination of the first proceeding. Wade v. Hunter, 336 U.S. 684, 69 S.Ct. 834, 93 L.Ed. 974 (1949). See also: Commonwealth v. Hogan, 482 Pa. 333, 393 A.2d 1133 (1978); Commonwealth v. Bolden, supra; Commonwealth v. Meekins, ___ Pa. Superior Ct. ___, 403 A.2d 591 (1979). This rule prevents the prosecution from obtaining a "second crack" after it

believes that its first effort has failed to persuade the trier of the facts. Burks v. United States, supra at 11, 98 S.Ct. at ___, 57 L.Ed.2d at 9-10; Downum v. United States, 372 U.S. 734, 736, 83 S.Ct. 1033, ____, 10 L.Ed.2d 100, 102 (1963); Commonwealth v. Hogan, supra at 337, 393 A.2d at 1135.

I must conclude, therefore, that a statutory procedure which permits the Commonwealth to obtain a second hearing after a juvenile has once been found not delinquent permits the juvenile to be placed in jeopardy twice for the same offense.

In the instant case, jeopardy attached at the master's hearing. Swisher v. Brady, supra. See also: Breed v. Jones, supra. The master's hearing resulted in a finding that the Commonwealth had failed to prove its case and a recommendation that the delinquency petition be dismissed. To require appellant at the request of the Commonwealth to submit to a hearing de novo before a juvenile judge was a violation of double jeopardy. Therefore, I would reverse the adjudication of delinquency and discharge the appellant. Because the majority reaches a contrary result, I must respectfully dissent.

Judge Donald E. Wieand participated in the consideration of this appeal by special designation after his term of office had expired.

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA
JUVENILE

In the interest of :

EDWARD STEPHENS, : J. V. # 18499

a Minor :

William J. Davies, Esquire, Assistant District Attorney
Jean Marie Cella, Esquire, Assistant District Attorney,
for the Commonwealth
Raymond J. Falzone, Jr., Esquire, Assistant Public Defender
Raymond R. Williams, Esquire, Assistant Public Defender
for Edward Stephens, a Minor

O P I N I O N

WRIGHT, J. DATED: APRIL 20, 1979

An Appeal has been taken to the Superior Court of Pennsylvania from the Adjudication of delinquency by Senior Judge John V. Diggins.

It appears that a Juvenile Complaint was filed against Edward Stephens charging him with Simple Assault and Aggravated Assault.

A Hearing was held before the Juvenile Master appointed by this Court. The Hearing was held on June 21, 1978 and after a full Hearing, the Master recommended that the Petition be dismissed.

Appendix C

The Commonwealth filed "Exception to Master's Recommendations and Petition for a Rehearing". On July 3, 1978, Howard F. Reed, Jr., J. granted a Rehearing and directed that "the case is to be scheduled for hearing before the regular Juvenile Hearing Judge at the earliest practicable date."

Thereafter, the Juvenile's attorney filed a Motion to Dismiss Commonwealth's Petition for a Rehearing alleging that "...such a Rehearing would violate the juvenile's right under the Pennsylvania and United States Constitutions not to be twice placed in jeopardy."[1]

Although the Petition and Answer thereto had already been considered and a Rehearing ordered, we considered the Juvenile's Motion even though he had every opportunity to have raised the constitutional issues in his Answer to the Commonwealth's Petition for a Rehearing.

After considering arguments and Briefs, an Order was entered by Robert A. Wright, J. on November 9, 1978 denying the Juvenile's Motion and directing that a Rehearing be scheduled as soon as possible.

---

[1]An Answer had been filed to the Commonwealth's Petition for a Rehearing which Answer mentioned nothing whatsoever about jeopardy or other constitutional rights. Therefore, in filing his Motion he requested this Court to give him a second chance regarding the disposition of the Commonwealth's Petition for Rehearing. On the other hand, he argues "Such a rehearing would give the Commonwealth a second chance to prove its case."

After a Rehearing before John V. Diggins, Senior Judge, he entered an Adjudication and Order for Further Study in which the Juvenile was adjudicated a delinquent and it was "...further ORDERED that the case against said child be and is hereby continued for further study and planning. Restitution in the amount of $300 is to be paid to Mrs. Garcia within six months." It is from this action of the Court that the Appeal was taken. Since Senior Judge Diggins continued the case for further study and planning we are of the opinion that no "final judgment" has been entered and that the Appeal is premature and should be dismissed.[2]

However, we will address the issue that we believe the Juvenile is attempting to raise; namely:

> WAS THE JUVENILE TWICE PLACED IN JEOPARDY WHEN A HEARING WAS HELD BEFORE SENIOR JUDGE DIGGINS?

If the Master had the authority to determine that the evidence presented by the Commonwealth was not sufficient"proof beyond a reasonable doubt that the child committed the acts" then we would probably agree with the Juvenile's argument. However, the Master does not have such authority.

---

[2]Section 23 (b) of The Juvenile Act (11 P.S. 320 (b) provides that if the child is found to be delinquent the Court "shall then proceed immediately or at a postponed hearing,...to hear evidence as to whether the child is in need of treatment, supervision or rehabilitation and to make and file its findings thereon." Diggins, Senior Judge, determined that there should be study and planning and a disposition at a later date.

Section 23 (a) of the Juvenile Act [11 P.S. 50-320 (a)] provides:

> "After hearing the evidence on the petition the court shall make and file its findings as to ..., whether the acts ascribed to the child were committed by him." (Emphasis added)

Section 5 (b), (c), and (d) of The Juvenile Act [11 P.S. 50-301 (b), (c) and (d)]also provides:

> (b) The court of common pleas may direct that hearings in any case or class of cases be conducted in the first instance by the master in the manner provided by this act. Before commencing the hearing the master shall inform the parties who have appeared that they are entitled to have the matter heard by the judge. If a party objects, the hearing shall be conducted by the judge. (Emphasis added)
>
> (c) Upon the conclusion of a hearing before a master, he shall transmit written findings and recommendations for disposition to the judge. (Emphasis added)
>
> (d) A rehearing before the judge may be ordered by the judge at any time upon cause shown. Unless a rehearing is ordered, the findings and recommendations become the findings and order of the court when confirmed in writing by the judge. (Emphasis added)

It is quite clear from the Act that when the hearing is held before a judge, the judge makes the decision. It is also clear from the Act that when a master holds a hearing that the master only makes "recommendations for disposition to the judge" and that if the judge does not adopt or approve the recommendations of the master, then upon cause shown, the judge

may grant a rehearing.

In the instant case, the provisions of the Act were followed. In fact, an additional step was permitted; namely, the Juvenile's "Motion to Dismiss Commonwealth's Petition for a Rehearing" was considered after a judge had already considered the Petition for Rehearing and granted the request for a rehearing.

There was never a dismissal of the Juvenile Petition.[3] The form dated June 21, 1978, and submitted to this Court by the Master provides:

> "8. Master's Recommendations:
> ...
> (f) Petition dismissed x"

The Court by granting the rehearing did not adopt the Master's findings and therefore there was never a dismissal.

The Act is drafted to encompass only one procedure that may contain two steps; a hearing before the master and upon cause shown, a second hearing before a judge. Under the Act, the master's findings themselves are never final. They are only final "when confirmed in writing by the judge." The master only makes a recommendation.

---

[3]It may be that the Juvenile is relying on the Master's statement at the end of the hearing at which time he stated that he was "going to dismiss the Petition." That was an unfortunate choice of words as he had no authority to take such action and, in fact, followed the proper procedure by submitting his findings and recommendations to the Court.

Even in criminal proceedings it is permissible for the Commonwealth to petition the Court for the re-arrest of a defendant who has been discharged by a District Justice of the Peace. See Commonwealth v. Flanders, 247 Pa. Superior Ct., 41.

Proceedings in Juvenile Court are not criminal and although the juvenile's constitutional rights must be protected, the purpose of the proceedings have an entirely different goal than criminal proceedings.

Applying the well defined rules for construing Statutes, it is quite clear that Section 5 (d) of The Juvenile Act is constitutional.

The cases relied upon by the Juvenile either support this Court's decision or are distinguishable.

For the above reasons, we found (on two occasions) that it was proper to grant a rehearing.

BY THE COURT:

Robert A. Wright

J.

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA

JUVENILE COURT DIVISION

IN THE INTEREST OF: :

Edward Stephens : J.V. _____
(child)

a minor :

Media, Pa. June 21, 1978
(date)

HOWARD F. REED, JR. J.
(Judge)

ORDER DISMISSING PETITION

AND NOW, this 21st day of June, 19 78, after a hearing before a Master and upon consideration of his report and recommendation, and consideration of the petition, it is ORDERED that the petition January 23, 1978
(date)
against the above juvenile be and is (are) dismissed.

BY THE COURT,

Judge

7/5/78
Refused rehearing granted.
HR

Appendix D

MASTER'S HEARING

1. (a) Name of Juvenile EDWARD STEPHENS
   (b) Municipality of Residence CHESTER, PA.

2. Date of Offense and Description of Charges 1-23-78 A.A., S.A.

3. Date and Nature of Proceedings 6-21-78 ADJUDICATORY HEARING

4. Attendees:
   (a) Attorney for Juvenile R. FALZONE, ESQ.
   (b) District Attorney V. HERR, ESQ.
   (c) Parents MR. & MRS.
   (d) Probation Officer MRS. BRADLEY
   (e) Others J. MCBEE, E. GARCIA, S. DORSEY, S. GARCIA, OFF. SAVAGE

5. Was Juvenile advised of right to counsel?
   Was Juvenile willing to proceed without counsel?

6. Witnesses:
   (a)
   (b)
   (c)
   (d)

7. Summary of Testimony and Finding of Facts Juv. involved a fight with another Juv. Victim suffered injuries when they fell over rail, including broken teeth, broken cheek bones, split lip.

Insufficient evidence beyond a reasonable doubt.

8. Master's Recommendations:

(a) Adjudicated Delinquent
(b) Adjudicated Deprived-Detained at Cottage
(c) Released Detention pending adjudicatory/dispositional hrg.
(d) Detained pending adjudicatory/dispositional hrg.
(e) Discharged from Supervision
(f) Petition dismissed/[redacted]n ✓
(g) Consent Decree approved
(h) Continuance granted
(i) Bench Warrant issued/rescinded
(j) Continued in Placement
(k) Other

9. Recommendation of costs: (a) Restitution:

(b) Other:

Date: 6/21/78

H. Farber

Howard Farber, Esq., Master
Juvenile Court

Supreme Court of Pennsylvania

Eastern District

IN THE INTEREST OF EDWARD STEPHENS, a Minor	:	No. 80-3-819
	:	
APPEAL OF: EDWARD STEPHENS	:	(Superior Court No. 257, October Term, 1979)
	:	(C.P. Delaware, Juvenile Division, J.V. 18499)

JUDGMENT

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the ORDER of the SUPERIOR COURT, be, and the same is hereby AFFIRMED.

BY THE COURT:

Marlene F. Lachman

Marlene F. Lachman, Esq.
Prothonotary

Dated: July 1, 1983

Appendix E

IN THE SUPREME COURT OF PENNSYLVANIA

EASTERN DISTRICT

IN THE INTEREST OF	:	NO. [illegible]-2-819
EDWARD STEPHENS, a minor	:	
	:	
Appeal of: EDWARD STEPHENS	:	

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Edward Stephens, the appellant above named, hereby appeals to the Supreme Court of the United States from the final order of the Supreme Court of Pennsylvania, affirming the adjudication of delinquency, entered herein on July 1, 1983.

This appeal is taken pursuant to 28 U.S.C. Section 1257(2).

Raymond R. Williams

RAYMOND R. WILLIAMS, Esquire
Attorney for Edward Stephens
Public Defender's Office
of Delaware County
Court House
Media, PA 19063

Dated:
August 19, 1983

No. 83-5494

In The

Supreme Court of the United States

OCTOBER TERM, 1983

IN THE INTEREST OF EDWARD STEPHENS,

a minor,

EDWARD STEPHENS, Appellant,

COMMONWEALTH OF PENNSYLVANIA, Appellee.

On Appeal from the Supreme Court of Pennsylvania

MOTION TO DISMISS APPEAL

Vram Nedurian, Jr.
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TABLE OF CONTENTS

ARGUMENT IN SUPPORT OF MOTION TO DISMISS APPEAL

The question presented by appellant is not so substantial as to require plenary consideration by this Court. The Pennsylvania Supreme Court properly determined that Pennsylvania's system of conducting adjudicatory hearings for juveniles who are alleged to be delinquent is constitutional. Pennsylvania's system of utilizing masters to assist the court in making its determinations regarding the alleged delinquency of minors should be seen as proper under either of two analyses. First, jeopardy does not attach at the master's hearing under Pennsylvania's statutory framework. Second, even if jeopardy should be found to attach at the master's hearing, the nature of Pennsylvania's system is such that the recommendations of the master are not final until acted upon by a judge, and thus the juvenile is subjected to a single, continuing proceeding which is not violative of the juvenile's double jeopardy rights. Additionally, the refusal of the juvenile in the instant case to object to having his matter heard by a master, and to request that his hearing be held before a judge, operates as a waiver of any complaint which the juvenile might have to the Pennsylvania procedure, inasmuch as the juvenile was apprised of his rights in this regard by the master and while represented by counsel.

Pennsylvania's juvenile justice system employs members of the bar as masters as a means of facilitating disposition of juvenile cases. *42 Pa.C.S. §6305.* The masters are empowered only to hear witnesses and make written findings and recommendations concerning a juvenile matter to a juvenile judge. The juvenile judge may order that a further hearing be conducted before a judge upon cause shown. The findings and recommendations of a master are of no effect whatever unless and until 1) both parties decide not to request a further hearing before a judge, and 2) the judge adopts the findings and recommendations of the master by confirming them in writing. Finally, prior to any hearing which is conducted in the first instance by a master, the master must inform the parties that they are entitled to have the matter heard by a judge. *Id.* In the instant case, the master recommended that the appellant be discharged; however, the court, in response to the Commonwealth's filing of exceptions to the master's report, refused to adopt the master's findings and recommendation and ordered a further hearing on the instant matter. At that further hearing, the trial court adjudicated the appellant delinquent, and ordered him to serve a term of probation and to pay restitution to

the victim. The period of probation of the appellant has terminated, and he is no longer a juvenile. Under Pennsylvania law, the appellant's adjudication has virtually no impact upon him now that he has reached majority. *42 Pa.C.S. §6354.*

The Pennsylvania Supreme Court correctedly held that jeopardy does not attach at the hearing before the master. The Pennsylvania statutory scheme has plainly designated the fact-finding and adjudicatory power solely in the hands of a judge, and not a master who makes only recommendations and proposed findings. *See, McKeiver v. Pennsylvania, 403 U.S. 528, 91 S.Ct. 1976, 29 L.Ed.2d 647 (1971).* Consequently, the Pennsylvania system is quite similar to the Maryland system which was upheld by this Court in *Swisher v. Brady, 438 U.S. 204, 98 S.Ct. 2699, 57 L.Ed. 705 (1978).* Furthermore, while this Court in *Swisher* suggested (without deciding) that jeopardy might attach at the initiation of proceedings before the master, the Pennsylvania statutory scheme differs in one very significant way from the Maryland statute examined in *Swisher*. Under the Pennsylvania framework, the juvenile is specifically advised at the beginning of his hearing that he is **entitled** to have his matter heard by a judge rather than a master. This fact, of course, highlights the legislative intent of the Pennsylvania statute that the hearing before the master does not act to cause jeopardy to attach, since the judge is clearly the only official with the power to find an adjudication, and the juvenile is specifically advised that he may bypass the master and go directly to a judge so as to eliminate the recommendation-proposed finding stage of the proceedings. Under the Pennsylvania scheme, it is only the juvenile court judge "whose object is to determine whether [the juvenile] has committed acts that violate a criminal law." *Breed v. Jones, 421 U.S. 519, 529, 95 S.Ct. 1779, 1785 44 L.Ed.2d 346, ____ (1975).* Therefore, the Pennsylvania scheme should be seen as causing jeopardy to attach only when the matter proceeds to the point that it is before a judge for determination.

However, even assuming, **arguendo,** that jeopardy attaches at the outset of a juvenile's hearing before a master, the Pennsylvania system must be seen as one "in which an accused juvenile is subjected to a single proceeding which begins with a master's hearing and culminates with an adjudication by a judge." *Swisher, 438 U.S. at 216, 98 S.Ct. at 2706, 57 L.Ed.2d at ____.* Like the Maryland procedure in *Swisher*, the Pennsylvania system provides for only one proceeding, wherein the master conducts an initial hearing and, upon its conclusion, "transmits written findings and recommendations for

disposition to the judge." *42 Pa.C.S. §6305(c).* Like the Maryland procedure, Pennsylvania provides for master's findings and recommendation which are **proposed only.** The findings and recommendations of the master may become the findings and order of the court **only** when adopted and confirmed in writing by the judge, who may require an additional hearing. As such, the continuity of the Pennsylvania system, a fact made known to the juvenile at the outset of his hearing before the master, establishes an unbroken single proceeding which does not operate to provide the state with a second opportunity to convict the juvenile or increase his punishment. Consequently, the Pennsylvania system is plainly analagous to the one approved by this Court in *Swisher*, and is not violative of the constitutional protection against double jeopardy. *See also, United States v. DiFrancesco, 449 U.S. 117, 101 S.Ct. 426, 66 L.Ed.2d 328 (1980).*

Finally, the defendant must be seen as having waived any objection which he has to Pennsylvania's system on double jeopardy grounds. As noted *supra*, the Pennsylvania procedure allows for a choice by the juvenile. At the outset of the masters hearing, the juvenile is advised that the case may be heard directly by a juvenile judge rather than proceeding before the master in order to obtain proposed findings and recommendations. The record of the instant case plainly reveals that the appellant was apprised of his right to go before a juvenile judge, and, despite having been represented by counsel at that hearing, declined to object to the proceeding, choosing instead to proceed before the master. Under the circumstances, the defendant must be seen as having knowingly and voluntarily relinquished any claim which he now presses concerning double jeopardy principles. *See, e.g., Johnson v. Zerbst, 304, U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938).*